

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4068 OF 2004

Vinodbhai Dhanji ... Petitioner

Vs.

M/s. Ruby Builders ... Respondents

Mr. M.S. Pandey for the petitioner.

Mr. R.D. Dave i/b M/s. N.N. Vaishnawa & Co. for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 14TH MARCH, 2005.

P.C.:-

1. The original defendant has filed this writ petition challenging the order dated 26/3/2004 whereby the Division Bench of the Small Causes Court at Bombay has dismissed Revision Application No.16 of 2004 filed by the defendant. The revision application was filed by the defendant challenging the order passed by the single judge of the Small Causes Court at Bombay dated 12/1/2004 on Interim Notice No.765 of 2003 in R.A.E. Suit No.274/690 of 2002 whereby the trial court directed the suit to proceed without the written statement of the defendant.

2. I have heard the learned counsel appearing for both sides. While dismissing the revision application filed

by the defendant, the court has relied on the judgment of this court in **Iridium India Telecom Ltd. v. Motorola Inc. & Ors., 2004(1) All MR 418** and observed that the court has no power to extend the period fixed by the statute for filing written statement. Obviously, the later judgment of the Division Bench of this court in **Chintaman Sukhdeo Kaklij and others v. Shivaji Bhausaheb Gadhe and others, 2004 (5) BCR 573**, where the court was considering the same question viz. whether the trial court can permit filing of the written statement beyond the period of 90 days stipulated under Order VIII Rule 1 of the Civil Procedure Code (for short, "the Code") was not before the court. The court was called upon to resolve the conflict as regards the true and correct interpretation of Order VIII, Rule 1 of the Code in view of the divergent opinion expressed by two learned single judges of this court. The court referred to its earlier judgment in **Iridium India Telecom's case (supra)** and observed that the issue as to whether Order VIII Rule 1 is mandatory or directory was not decided by this court in that case. It was further observed that in fact, the court's attention was not drawn to Rules 9 and 10 of Order VIII of the Code. After considering the relevant provisions, this court held that Rules 9 and 10 of Order VIII of the Code give discretion to the trial court to allow the defendant to file written statement even after the expiry of a period of 90 days as contemplated by Order VIII, Rule 1 of the Code. This court further added that this does not mean that the order extending time to file written statement can be granted casually, and

unmindful of provisions that extension would not exceed 90 days. It was further observed that the provisions of Order VIII, Rule 1 should always be kept in mind while passing order extending time for filing written statement to the suit and ordinarily such extension shall not be granted except in exceptional and special circumstances.

3. Since, the later judgment in **Chintaman Sukhdeo's case (supra)** was not considered by the Division Bench of the Small Causes Court, it is necessary to set aside the order dated 26/3/2004 and give a direction to that court to consider Revision Application No.16 of 2004 filed by the defendant afresh in the light of the judgment of this court in **Chintaman Sukhdeo's case (supra)** within a period of three months from the date of receipt of this order by it. Hence, the following order.

4. The order passed by the Division Bench of the Small Causes Court in Revision Application No.16 of 2004, which is impugned in this writ petition, is set aside. The said court is directed to consider the said revision application afresh after giving hearing to both sides in the light of the judgment of this court in **Chintaman Sukhdeo Kaklij and others v. Shivaji Bhausahab Gadhe and others, 2004 (5) BCR 573,** within a period of three months from the date of receipt of this order by it. It is clarified that this court has not expressed any opinion on the merits of the case of either parties and the court

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shall consider the revision application independently.

5. With the above observations, the petition is disposed
of.

(SMT. RANJANA DESAI, J.)